

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELISSA L. DREHER,

Plaintiff,

v.

ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY, an
Illinois corporation, and DOES I-V,

Defendants.

NO. 2:24-CV-0139-TOR

ORDER DENYING MOTION TO
DISMISS OR TRANSFER CASE &
DENYING MOTION TO STRIKE

BEFORE THE COURT is Defendant Allstate's Motion to Dismiss or Transfer Case (ECF No. 10) and Plaintiff's Motion to Strike Defendant's Reply (ECF No. 21). The Court finds these matters suitable for disposition without oral argument. LCivR 7(i)(3)(B)(iii). The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Defendant's Motion to Dismiss or Transfer Case (ECF No. 10) is **DENIED** and Plaintiff's Motion to Strike (ECF No. 21) is **DENIED**.

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ORDER DENYING MOTION TO DISMISS OR TRANSFER CASE &
DENYING MOTION TO STRIKE ~ 1

BACKGROUND

This case arises out of a motor vehicle collision which occurred in Spokane County, Washington, on July 5, 2021. ECF No. 1-2 at 4, ¶ 3.1. Because the issues presented arrive in the posture of a motion to dismiss by Defendant Allstate, the Court accepts the factual allegations of the complaint as true and construes them in the light most favorable to Plaintiff. *Interpipe Contracting, Inc. v. Becerra*, 898 F.3d 879, 886 (9th Cir. 2018) (quoting *L.A. Lakers, Inc. v. Fed. Ins. Co.*, 869 F.3d 795, 800 (9th Cir. 2017)).¹

Plaintiff was driving southbound on State Route 27 in Spokane County when another driver collided into her. ECF No. 1-2 at 4, ¶ 3.1. Plaintiff, who was not responsible for the accident, maintains she sustained multiple injuries and damages. *Id.* at 4, ¶ 3.2.

Both Plaintiff and the at-fault driver were insured by Defendant Allstate. *Id.* at 3, ¶ 2.2; 4, ¶ 3.4. At the time of the accident, the at-fault driver was

¹ Plaintiff argues that Defendant's motion must be construed as a motion for summary judgment rather than a motion to dismiss. ECF No. 15 at 2. Regardless, the Court must view the facts and draw all reasonable inferences in Plaintiff's favor. *Scott v. Harris*, 550 U.S. 372, 378 (2007) (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (*per curiam*)).

1 underinsured. *Id.* at 4, ¶ 3.3. Plaintiff paid insurance premiums for underinsured
2 motorist (UIM) coverage from Defendant. *Id.* at 4, ¶ 3.4. Plaintiff sought her full
3 UIM policy limits—\$250,000—and tendered to Defendant a demand letter, her
4 medical records, and other documentation supportive of her claims. *Id.* at 5, ¶¶
5 3.5-3.6. When Defendant declined to provide Plaintiff her UIM policy limits,
6 Plaintiff filed a complaint in Spokane County Superior Court alleging breach of
7 contract, violations of the Washington Administrative Code (WAC) and Revised
8 Code of Washington (RCW) for claims mishandling and unreasonable denial of
9 benefits, violations of the Washington Consumer Protection Act (CPA), bad faith,
10 and violations of the Insurance Fair Conduct Act (IFCA). *Id.* at 5-10. Plaintiff
11 seeks her UIM policy limits, treble damages, and attorneys’ fees and costs. *Id.* at
12 10-11.

13 Defendant timely removed the action to this Court on April 30, 2024,
14 alleging that complete diversity exists between the parties. ECF No. 1 at 3.
15 Defendant is an Illinois corporation licensed to conduct insurance business in
16 Washington and Idaho. *Id.* at 3, ¶ 4. Plaintiff currently resides in Montana. ECF
17 No. 1-2 at 2, ¶ 1.1. At the time of the collision, Plaintiff was living in Elk,
18 Washington, although she continued to retain a residence in Worley, Idaho. *Id.*

19 Defendant now moves to dismiss or transfer the case, arguing that the forum
20 selection clause and choice of law provision in the parties’ insurance contract

1 dictate that all suits must be brought in Idaho and adjudicated under Idaho law.
2 ECF No. 10 at 4. Plaintiff responds that the action should be decided according to
3 Washington law by a Washington court. ECF No. 15 at 2.

4 DISCUSSION

5 The Court has subject-matter jurisdiction over this action under 28 U.S.C. §
6 1332(a), and venue is proper in the Eastern District of Washington. Plaintiff's
7 claims are to be resolved by the application of Washington law.

8 I. Jurisdiction

9 Federal courts are courts of limited jurisdiction, possessing only that power
10 authorized by the Constitution and congressional fiat. *Kokkonen v. Guardian Life*
11 *Ins. Co. of America*, 511 U.S. 375, 377 (1994). Under 28 U.S.C. § 1332(a)(1), the
12 legislature has provided that “[t]he district courts shall have original jurisdiction of
13 all civil actions where the matter in controversy exceeds the sum or value of
14 \$75,000, exclusive of interests and costs, and is between . . . citizens of different
15 States.” Although the burden technically rests with the Defendant here to establish
16 federal jurisdiction, district courts have an “independent obligation to determine
17 whether subject-matter jurisdiction exists.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500,
18 514 (2006).

19 Diversity between citizens must be complete, meaning “each of the plaintiffs
20 must be a citizen of a different state than each of the defendants.” *Allstate Ins. Co.*

1 *v. Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2004); accord *Strawbridge v. Curtiss*, 3
2 Cranch 267, 267 (1806). “The natural person’s state citizenship is . . . determined
3 by her state of domicile,” meaning “her permanent home, where she resides with
4 the intention to remain or to which she intends to return.” *Kanter v. Warner-*
5 *Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A corporation, by contrast, is a
6 citizen of any State in which it is incorporated and of the State where it maintains
7 its principal place of business. 28 U.S.C. § 1332(c)(1); see also *Hertz Corp. v.*
8 *Friend*, 559 U.S. 77, 80 (2010). Citizenship is assessed at the time the lawsuit is
9 filed. *Freeport-McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991).
10 Thus, antecedent or subsequent changes to a party’s citizenship status do not affect
11 a court’s otherwise proper exercise of jurisdiction. *Id.*

12 Plaintiff does not dispute that this Court has diversity jurisdiction over this
13 matter. See ECF No. 15. The Court agrees that the amount in controversy is
14 satisfied, as Plaintiff seeks her policy limits of \$250,000, plus treble damages and
15 attorneys’ fees. The Court also agrees that complete diversity exists between the
16 parties. Plaintiff was living in Montana at the time suit was filed, and Defendant
17 Allstate is incorporated in Illinois. ECF No. 1-2 at 2-3, ¶ 1.2; see *NewGen, LLC v.*
18 *Safe Cig, LLC*, 840 F.3d 606, 614 (9th Cir. 2016) (“The place where a person lives
19 is taken to be his domicile until facts adduced establish the contrary.”) (quoting
20 *Anderson v. Watts*, 138 U.S. 694, 706 (1891)).

1 Importantly, the inclusion of John Doe defendants I-V in the complaint does
2 not alter the Court’s finding that diversity is complete. 28 U.S.C. § 1441(b)(1)
3 provides that “the citizenship of defendants sued under fictitious names shall be
4 disregarded” in determining whether an action is removable under § 1332(a). *See*
5 *also Soliman v. Philip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002) (“The
6 citizenship of fictitious defendants is disregarded for removal purposes and
7 becomes relevant only if and when the plaintiff seeks leave to substitute a named
8 defendant.”).

9 Although Plaintiff suggests that the at-fault driver and at least one Allstate
10 adjustor are domiciled in Washington State, she makes no representations about
11 whether they are intended to be John Does in this action. *See Conerly v. Liberty*
12 *Mutual Ins. Co.*, No. 2:23-cv-515-GMN-EJY, 2023 WL 4494422, at *3 (D. Nev.
13 June 29, 2023) (“[D]istrict courts have found that identifying facts limited to a job
14 position or a partial name are insufficient to convert a defendant from fictitious to
15 real.”). Accordingly, the Court has subject-matter jurisdiction over this matter
16 under 28 U.S.C. § 1332(a)(1).

17 **II. Validity of Forum Selection Clause**

18 Defendant argues that the existence of a valid forum selection clause
19 precludes the Court from adjudicating this matter. ECF No. 10 at 2. When an
20 action is removed from state court to the federal district court embracing the place

1 where the action was formerly pending, then venue is automatically proper under
2 28 U.S.C. § 1441(a). *See Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 666
3 (1953); *see also Yageo America Corp v. Tseng*, No. C06-0227RSL, 2006 WL
4 8454994 (W.D. Wash. Apr. 21, 2006) (“A district court acquires venue through
5 defendants’ voluntary removal to federal court, regardless of whether venue would
6 have been proper had the case originally been filed in that court.”) (citing
7 *Seaboard Rice Milling Co. v. Chicago, R.I. & P. Ry. Co.*, 270 U.S. 363, 367
8 (1926)).

9 Plaintiff originally brought this action in Spokane County Superior Court,
10 which is embraced by the United States District Court for the Eastern District of
11 Washington. Accordingly, venue is proper in this Court under § 1441(a). Even if
12 removal had not occurred, however, the Court would still be inclined to find the
13 forum selection clause inapplicable. The clause reads:

14 **Where Lawsuits May Be Brought**

15 Subject to the following two paragraphs, any and all lawsuits in any
16 way related to this policy shall be brought, heard, and decided only in
a state or federal court located in Idaho. . .

17 If a covered loss to property we insure under this policy, a covered
18 motor vehicle accident, or any other occurrence for which coverage
19 applies under this policy happens outside Idaho, lawsuits regarding that
20 covered loss to property, covered motor vehicle accident, or other
covered occurrence *may also be brought in the judicial district where
that covered loss to property, covered motor vehicle accident, or other
covered occurrence happened.*

1 ECF No. 11 at 38 (emphasis added).

2 This provision patently allows for suits to be brought in forums other than
3 Idaho. The relevant language provides that lawsuits shall be brought in Idaho
4 courts “[s]ubject to” certain exceptions. *Id.* Those exceptions include where a
5 “covered motor vehicle accident” “happens outside Idaho,” in which case a
6 lawsuit “may also be brought in the judicial district” where that accident occurred.
7 *Id.*; see also *Avista Corp. v. NorthWestern Corp.*, 2:21-CV-163-RMP, 2021 WL
8 6061795, at *4 (E.D. Wash. Aug. 18, 2021) (“In order for a forum selection clause
9 to be considered mandatory, the language must designate the court as the *exclusive*
10 forum.”) (emphasis added). Defendant’s alternative reading strains the plain text
11 of this clause. Therefore, venue is proper in the Eastern District of Washington
12 and outright dismissal is unwarranted.

13 **III. Propriety of Transfer**

14 Proper venue in the forum where the action is pending does not prevent a
15 party from seeking discretionary transfer under 28 U.S.C. § 1404(a). *Norwood v.*
16 *Kirkpatrick*, 349 U.S. 29, 32 (1955). The purpose of allowing transfer is to
17 “prevent the waste of time, energy, and money, and to protect litigants, witnesses,
18 and the public against unnecessary inconvenience and expense.” *Van Dusen v.*
19 *Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks omitted). The
20 movant must establish (1) that the transferee court is one in which the action could

1 have originally been brought and (2) that transfer is appropriate. *Hatch v. Reliance*
2 *Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985). In determining whether transfer is
3 appropriate under the second step, courts flexibly consider the following private
4 interest factors:

5 (1) the location where the relevant agreements were negotiated and
6 executed, (2) the state that is most familiar with the governing law, (3)
7 the plaintiff's choice of forum, (4) the respective parties' contacts with
8 the forum, (5) the contacts relating to the plaintiff's cause of action in
9 the chosen forum, (6) the differences in the costs of litigation in the two
forums, (7) the availability of compulsory process to compel attendance
of unwilling non-party witnesses, and (8) the ease of access to sources
of proof.

10 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

11 In addition, courts also consider various public interest factors, to include:
12 "the administrative difficulties flowing from court congestion; the local interest in
13 having localized controversies decided at home; and the interest in having the trial
14 of a diversity case in a forum that is at home with the law." *Atlantic Marine Const.*
15 *Co., Inc. v. U.S. Dist. Court for the W. Dist. of Texas*, 571 U.S. 49, 62 n.6 (2013)
16 (quotation marks and brackets omitted). The decision to transfer is ultimately a
17 discretionary one, based upon an "individualized, case-by-case consideration of
18 convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30
19 (1988) (quoting *Van Dusen*, 376 U.S. at 622).

1 The Court assumes without deciding that the action originally could have
2 been brought in an Idaho court. Even so, Defendant has not shown that transfer
3 would be appropriate under the second step of the test. On balance, the private and
4 public interest factors favor Plaintiff's selection of Washington as a forum.

5 **A. Private Interest Factors**

6 The first factor, where "the relevant agreements were negotiated and
7 executed," favors Idaho as a forum. The parties initially contracted for the policy
8 when Plaintiff was domiciled in Idaho. Although Plaintiff was living in
9 Washington at the time of the renewal and the subsequent car accident, she does
10 not proffer any evidence showing that she made endeavors to inform Allstate that
11 she had relocated to Washington near or after the time her policy renewed; indeed,
12 the address on Plaintiff's most recent policy still lists her Idaho PO Box. *See* ECF
13 No. 11 at 6. The insurance agreement is therefore best characterized as executed in
14 Idaho.

15 The second factor, "the state which is most familiar with the governing law,"
16 favors Washington as a forum. As covered in Section IV, the Court finds that
17 Washington law applies to the different issues in dispute. Even if Idaho law did
18 apply, though, this factor would not cut in favor of transfer to an Idaho forum *per*
19 *se*. "Federal courts are equally equipped to apply distant state laws when the law is
20 not complex or unsettled," and neither party has shown that the application of

1 Washington or Idaho law would require the Court to undertake a particularly novel
2 or complex analysis. *T-Mobile USA, Inc. v. Selective Ins. Co. of America*, No.
3 C15-1739JLR, 2016 WL 1464468 at *4 (W.D. Wash. Apr. 14, 2016).

4 The third factor looks to the Plaintiff's choice of forum. Under § 1404,
5 "great weight is generally accorded [to the] plaintiff's choice of forum," unless
6 "the operative facts have not occurred within the forum and the forum has no
7 interest in the parties or subject matter." *Lou v. Belzberg*, 834 F.2d 730, 739 (9th
8 Cir. 1987).

9 Plaintiff's preferred forum is Washington. The accident at issue occurred in
10 Washington, and Plaintiff was living in Washington at the time of the accident and
11 when Defendant initially denied Plaintiff her UIM benefits. Thus, although
12 Washington is not Plaintiff's current home forum, this element weighs heavily in
13 Plaintiff's favor.

14 The fourth private interest factor, which considers the parties' respective
15 contacts with the forum, is neutral. Plaintiff signed and accepted the original
16 policy in Idaho. At the time of renewal, Defendant believed that Idaho was still
17 Plaintiff's home forum. On the other hand, though, Plaintiff had significant
18 contacts in Washington at the time of the accident, and Defendant, as an Illinois
19 corporation doing business in all 50 states, appears to have no greater ties to Idaho
20 than any other state, including Washington.

1 The fifth factor evaluates “the contacts relating to the plaintiff’s cause of
2 action in the chosen forum.” This factor favors allowing litigation to proceed in
3 Washington. Washington is the site of the crash and where Plaintiff’s early
4 negotiations with Defendant over its application of the UIM policy to her claims
5 began. Although negotiations with Allstate continued when Plaintiff moved to
6 Montana and Plaintiff filed suit after moving to Montana, this does not render
7 Idaho a more appropriate venue.

8 The sixth factor is also partial to Plaintiff’s choice of forum. The parties did
9 not brief the issue of costs; however, the Court expects that the majority of
10 witnesses, including the non-party at-fault driver, reside in this district, and that the
11 bulk of the evidence of Plaintiff’s treatment is likewise here, given that Plaintiff
12 resided in Washington for over a year after the accident. ECF No. 17 at 2, ¶ 7.

13 Although Plaintiff and Defendant would incur some travel costs in coming to
14 Washington, there is no evidence that it would be any less costly to travel to Idaho.

15 The seventh factor concerns “the availability of compulsory process to
16 compel attendance of non-party witnesses.” Under Rule 45(c)(1), “[a] subpoena
17 may command a person to attend a trial, hearing, or deposition only as follows: (A)
18 within 100 miles of where the person resides, is employed, or regularly transacts
19 business in person; or (B) within the state where the person resides, is employed,
20 or regularly transacts business in person, if the person (i) is a party or a party’s

1 officer; or (ii) is commanded to attend a trial and would not incur substantial
2 expense.” However, “[a] court’s subpoena power is only relevant if non-party
3 witnesses within the state will likely refuse to testify.” *Stanbury Elec.*
4 *Engineering, LLC v. Energy Prods., Inc.*, No. C16-0362JLR, 2016 WL 3255003 at
5 *7 (W.D. Wash. June 13, 2006) (quoting *Silver Valley Partners, LLC v. De Motte*,
6 No. C05-5590 RBL, 2006 WL 2711764, at *4 (W.D. Wash. Sep. 21, 2006)).
7 Neither side has identified potential witnesses who might refuse to testify. This
8 factor is therefore neutral.

9 The final private interest factor, “the ease of access to sources of proof,” also
10 weighs against transfer. As discussed, Plaintiff was injured in Washington.
11 Presumably, most non-party witnesses to the accident and evidence of Plaintiff’s
12 subsequent injuries and damages are within the forum. While further proof of
13 damages may exist within Montana, this does not strengthen Defendant’s claim
14 that Idaho provides a superior forum.

15 Seven of the eight private interest factors are either neutral or favor
16 Washington as a forum. This does not support that Idaho would provide a more
17 convenient or fair venue. *Stewart Org.*, 487 U.S. at 30. Nevertheless, the Court
18 considers the public interest factors.

19 **B. Public Interest Factors**

20 The public interest factors also weigh in favor of the Court retaining this

1 matter. In deciding whether transfer is in the public interest, courts may consider
2 “the administrative difficulties flowing from court congestion; the local interest in
3 having localized controversies decided at home; and the interest in having the trial
4 of a diversity case in a forum that is at home with the law.” *Atlantic Marine Const.*
5 *Co.*, 571 U.S. at 62 n.6.

6 As to the first consideration, the Ninth Circuit has held that “[t]he real issue
7 is not whether a dismissal will reduce a court’s congestion but whether a trial may
8 be speedier in another court because of its less crowded docket.” *Gates Learjet*
9 *Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir. 1984). The parties have not argued
10 whether trial would be any faster in Idaho than Washington and the Court declines
11 to speculate on this matter. This factor is therefore neutral.

12 The local interest factor is also neutral. Washington has an interest in
13 resolving disputes that arise out of motor vehicle accidents that occur within its
14 borders and between its residents. Plaintiff, however, is no longer a Washington
15 resident. Likewise, while Idaho may have an interest in whether its contracts for
16 insurance are accurately interpreted and enforced, the contract explicitly allows
17 suits to be brought in jurisdictions other than Idaho, and the party seeking
18 enforcement is a citizen of Illinois.

19 As discussed, the Court will apply Washington law to this dispute. Thus, the
20 final public interest factor supports retaining the matter in Washington.

1 Taken as a whole, the private and public interest factors favor keeping venue
2 in Washington. The operative facts animating Plaintiff's complaint occurred in
3 Washington, while Plaintiff was a resident living here. Defendant is an Illinois
4 corporation doing business in Washington. The plain text of the parties' policy
5 agreement allows actions to be brought in the jurisdiction where covered motor
6 vehicle accidents such as this one occur. It would not be in the interests of justice
7 to transfer this matter to a forum which is detached from the operative facts,
8 witnesses, evidence and applicable law. *See Decker Coal Co. v. Commonwealth*
9 *Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (holding a defendant must "make a
10 strong showing of inconvenience to warrant upsetting the plaintiff's choice of
11 forum."). Accordingly, the Court denies Defendant's motion for transfer.

12 **IV. Governing Law**

13 Plaintiff and Defendant spend a considerable portion of their briefing
14 sparring over whether Idaho or Washington law applies to their dispute. *See* ECF
15 Nos. 10; 15. Defendant presses that Idaho law applies due to the existence of a
16 valid choice of law clause, but argues alternatively that Idaho law would apply
17 even in the absence of an otherwise enforceable choice of law provision. ECF No.
18 10 at 2-9. The choice of law clause at issue provides:

19 **What Law Will Apply**

20 This policy is issued in accordance with the laws of Idaho and covers
property or risks principally located in Idaho. Subject to the following

1 paragraph, any and all claims or disputes in any way related to this
2 policy shall be governed under the laws of Idaho.

3 If a covered loss to property we insure under this policy, a covered
4 motor vehicle accident, or any other occurrence for which coverage
5 applies under this policy happens outside Idaho, claims or disputes
6 regarding that covered loss to property, covered motor vehicle accident,
7 or other covered occurrence *may be governed by the laws of the
jurisdiction in which that covered loss to property, covered motor
vehicle accident, or other covered occurrence happened, only if the
laws of that jurisdiction would apply in the absence of a contractual
choice of law provision such as this.*

8 ECF No. 11 at 38 (emphasis added).

9 Defendant argues that the clause at issue provides that Idaho law applies by
10 default. *See* ECF No. 10 at 5-6 (urging the Court to apply § 187 of the
11 Restatement (Second) of Conflict of Laws to determine whether the choice of law
12 provision is enforceable). The Court need not delve into whether the paragraph
13 selecting Idaho law is enforceable because, like the forum selection clause, it is not
14 applicable in the first instance. The text plainly instructs that “[i]f . . . a covered
15 motor vehicle accident . . . happens outside Idaho,” then claims pertaining to that
16 accident “may be governed by the laws of the jurisdiction” where that accident
17 occurred, provided that “the laws of that jurisdiction would apply in the absence of
18 a contractual choice of law provision.” *Id.* Here, the accident took place in
19 Spokane County, Washington. ECF No. 1-2 at 4, ¶ 3.1. Therefore, the Court must
20 undertake a choice of law analysis to determine whether Washington or Idaho law

1 applies; it does not need to consider the enforceability of the clause selecting Idaho
2 when the plain text of that provision places it outside the ambit of this case. *See*
3 *Allstate Fire & Cas. Ins. Co. v. Stratman*, 620 S.W.3d 228 (Mo. Ct. App. 2020)
4 (undertaking a choice of law analysis in a dispute over an insurance policy issued
5 by Allstate which used nearly identical language to the choice of law clause here);
6 *see also Erwin v. Cotter Health Ctrs.*, 161 Wash.2d 676, 694 (2007) (noting that
7 Section 187 of the Restatement only applies when parties have made an express
8 contractual choice of law).

9 When a federal court is sitting in diversity, the forum state’s choice of law
10 rules determine what law governs the dispute. *See Klaxon Co. v. Stentor Elec.*
11 *Mfg. Co.*, 313 U.S. 487, 496 (1941). Before engaging in a conflict of laws
12 analysis, Washington courts first ask whether an actual conflict exists between the
13 laws or interests of Washington and the laws or interests of the other state. *Seizer*
14 *v. Sessions*, 132 Wash.2d 642, 648 (1997). An actual conflict exists if the outcome
15 of a claim would be different if the laws of the other state were applied to the
16 dispute. *Id.* If no actual conflict exists, the local law of the forum applies and the
17 Court is not required to undertake any further analysis. *Woodward v. Taylor*, 184
18 Wash.2d 911, 917 (2016).

19 When an actual conflict exists, Washington courts evaluate which forum has
20 the “most significant relationship” to the transaction and the parties. *Pope Res. LP*

1 *v. Certain Underwriters at Lloyd's, London*, 19 Wash. App. 2d 113, 125 (2021).
2 For claims under the CPA and IFCA, claims for insurance bad faith, and related
3 claims under the RCW and WAC for claims mishandling and/or unreasonable
4 denial of benefits, Washington courts apply the Restatement (Second) of Conflict
5 of Laws § 145(1) (Am. Law Inst. 1971). *See, e.g., T-Mobile USA*, 2016 WL
6 1464468, at *10 (analyzing bad faith, IFCA, and CPA claims together under
7 § 145); *see also Newmont USA Ltd. v. American Home Assur. Co.*, 676 F. Supp. 2d
8 1146, 1163 (E.D. Wash. 2009) (“In Washington, claims for bad faith breach of
9 contract sound in tort.”). For claims for breach of contract, Washington courts
10 apply § 188(2) of the Restatement. *Id.*

11 **A. CPA, IFCA, Bad Faith, & RCW and WAC Claims**

12 Defendant argues in its Reply that an actual conflict exists between the laws
13 of Idaho and Washington as to Plaintiff’s CPA, IFCA, and bad faith claims. ECF
14 No. 20 at 3.² Even assuming an actual conflict exists, Defendant has not shown
15 that the § 145 factors support the application of Idaho law.

17 ² Plaintiff moves to strike Defendant’s Reply, claiming it is untimely and
18 raises new arguments which were not addressed in its opening brief. ECF No. 21.
19 Although the Reply was indeed untimely, it did not make a substantive difference
20 to the Court’s determination of the issues. As to the allegation that Defendant

1 Under § 145, courts evaluate the following contacts: “(a) the place where the
2 injury occurred, (b) the place where the conduct causing the injury occurred, (c)
3 the domicil, residence, nationality, place of incorporation and place of business of
4 the parties, and (d) the place where the relationship, if any, between the parties is
5 centered.” Rest. (2d) Confl. § 145(2). “The court must evaluate the contacts both
6 quantitatively and qualitatively, according to their relative importance to the
7 particular issue at hand.” *Newmont USA*, 676 F. Supp. 2d at 1163 (italics omitted).

8 The first factor looks to the place where the injury occurred. The car
9 accident occurred in Washington and involved a Washington resident. Defendant
10 allegedly refused to pay Plaintiff’s claims while she was still living in Washington.
11 However, the injury is ongoing, and Plaintiff now resides in Montana. *See Lange*
12 *v. Penn Mut. Life Ins. Co.*, 843 F.2d 1175, 1179 (9th Cir. 1988) (describing the
13 injury as the places where the plaintiff lived during the denial of her benefits).
14 This factor thus tends to weigh slightly in favor of applying Washington law.

15 The second factor asks where the conduct causing the injury occurred. The
16 denial of benefits emanated from Allstate, which is incorporated in Illinois. *See id.*

17
18
19 raised new arguments for the first time in its Reply, the Court finds those
20 contentions were responsive to Plaintiff’s arguments and therefore appropriate.

1 (the location of the conduct causing injury is at the insurance company's home
2 office). The factor is thus neutral as to what law applies.

3 The third factor appraises the parties' domicil, residence, and/or place of
4 incorporation. Plaintiff resided in Washington at the time of the accident and for
5 one year thereafter before relocating to Montana, where she now lives. ECF No.
6 17 at 2, ¶ 7. As mentioned, Allstate is incorporated in Illinois. Thus, like the first
7 factor, this issue weighs slightly in favor of application of Washington law.

8 The final factor asks where the parties' relationship is centered. As
9 discussed in the Court's venue analysis under § 1404, this factor somewhat favors
10 the application of Idaho law. *See supra* p. 10.

11 Each of these four contacts must be weighed in accordance with their
12 "relative importance" respecting the claims in issue. *Newmont USA*, 676 F. Supp.
13 2d at 1163. In cases where the conduct causing injury and personal injury occur in
14 different states, "the local law of the state of injury will usually be applied to
15 determine most issues involving the tort." Rest. § 146, cmt. e; *see also Sutter*
16 *Home Winery, Inc. v. Vintage Selections, Ltd.*, 971 F.2d 401, 407 (9th Cir. 1992)
17 ("Claims arising in tort are not ordinarily controlled by a contractual choice of law
18 provision.").

19 On balance, Plaintiff's claims for violations of IFCA, the CPA, the WAC
20 and RCW, and bad faith favor the application of Washington law. Plaintiff was

1 living in Washington at the time of the precipitating event, and Defendant refused
2 to pay Plaintiff's UIM benefits while she was living in Washington for a year
3 thereafter. ECF No. 17 at 2, ¶ 7. As such, Washington law most appropriately
4 applies to Plaintiff's tort claims.

5 **B. Breach of Contract Claims**

6 Plaintiff also makes a claim for breach of contract. Defendant does not
7 argue there is an actual conflict between Idaho and Washington law for breach of
8 contract. *See* ECF No. 20 at 3.

9 In Idaho, "[t]he elements for a claim for breach of contract are: (a) the
10 existence of the contract, (b) the breach of the contract, (c) the breach caused
11 damages, and (d) the amount of those damages." *Mosell Equities, LLC v. Berryhill*
12 *& Co., Inc.*, 154 Idaho 269, 278 (2013). This analysis is not materially distinct
13 from a claim for breach of contract under Washington law, which requires a
14 plaintiff to demonstrate "that a valid agreement existed between the parties, the
15 agreement was breached, and the plaintiff was damaged." *Univ. of Washington v.*
16 *Gov't Emps. Ins. Co.*, 200 Wash. App. 455, 467 (2017); *see also Baldwin v. Silver*,
17 165 Wash. App. 463, 473 (2011) (listing the four elements of a breach of contract
18 claim as duty, breach, causation, and damages). Consequently, no actual conflict
19 exists, and the Court considers Plaintiff's claim for breach of contract under
20

1 Washington law. *See Woodward*, 184 Wash.2d at 917 (the local law of the forum
2 applies when actual conflict does not exist).

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Defendant's Motion to Dismiss or Transfer Case (ECF No. 10) is **DENIED**.

5 2. Plaintiff's Motion to Strike Defendant's Reply (ECF No. 21) is **DENIED**.

6 The District Court Executive is directed to enter this Order, furnish copies to
7 counsel, and **STRIKE** the hearing date for oral argument on August 21, 2024. The
8 file remains **OPEN**.

9 DATED August 8, 2024.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge